

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BS BIG V, LLC; BHC BIG V, LLC; and :
BHRA BIG V, LLC, :
: Plaintiffs, :
: : ORDER
-against- :
: : 19 Civ. 4273 (GBD) (SLC)
PHILADELPHIA INDEMNITY INSURANCE :
COMPANY, :
: Defendant. :
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GEORGE B. DANIELS, United States District Judge:

- Plaintiffs' motion *in limine* to preclude Defendant from offering any other alternative cause of the damage other than the frozen pipe (ECF No. 64 at 5–7) is DENIED as moot, since Defendant has indicated that they will not. (See Conference Tr., ECF No. 73, at 10:25–11:3.)
- Plaintiffs' motion *in limine* to preclude Defendant from offering evidence regarding the subsequent leasing of the property to Taco Bell (ECF No. 64 at 7–10) is DENIED without prejudice to renew at the time of trial.
- Plaintiffs' motion *in limine* to preclude Defendant from offering any evidence of damages (*id.* at 11–12) is DENIED without prejudice to renew at the time of trial.
- Defendant's motion *in limine* to limit Michael Rubino's valuation testimony to Replacement Cost Value (ECF No. 65 at 2–7) is DENIED.
- Defendant's motion *in limine* directing that Plaintiffs must prove damage to the building only (including permanently installed fixtures), as the policy does not cover business personal property (*id.* at 7–13), is GRANTED.

- Defendant's motion *in limine* to preclude the Sherbansky Report as inadmissible (*id.* at 13–16) is DENIED.
- Defendant's motion *in limine* to limit Rudy Sherbansky's testimony to allegations of freezing in rebuttal after Defendant's expert testimony (*id.* at 16–20) is DENIED.
- Defendant's motion *in limine* for an adverse inference, due to Plaintiffs' "withholding" of the Sherbansky Report and disposal of the pipe joint (*id.* at 20–23), is DENIED without prejudice to renew at the time of trial.
- Defendant's motion *in limine* determining that the policy's definition of "maintain heat" requires more than heating by sunlight (*id.* at 23–24) is GRANTED.

The Clerk of Court is directed to close the motions at ECF Nos. 64 and 65.

Dated: New York, New York
December 13, 2023

SO ORDERED.



GEORGE B. DANIELS
United States District Judge